

SEP 20 1900

JAMES D. MAHER  
CLERK

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF KANSAS.**  
**MAILED FIFTEEN, ROBERT L.**  
**Appellants.**

**vs.**  
**CHARLES W. HARRISON, Warden of the United**  
**States Penitentiary at Leavenworth,**  
**Attala County, Kansas.**

**To the Clerk of the District Court of the United**  
**States for the District of Kansas.**

**NOTICE BY APPELLANTS TO ADVANCE.**

**ISAAC B. KIRKSELL,**  
**MARTIN J. O'DONNELL,**  
**Attorneys for Appellants.**

In the  
**Supreme Court of the United States**  
October Term, 1920.

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ALEXANDER KAHN, DONALD FISHER, ROBERT L.  
LeCOCQ, *et al,* *Appellants.*

vs.

AUGUST V. ANDERSON, Warden of the United  
States Penitentiary at Leavenworth,  
Kansas, *Respondent.*

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*In Error to the District Court of the United  
States for the District of Kansas.*

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No. 421.

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**MOTION BY APPELLANTS TO ADVANCE.**

Come now the appellants and respectfully move  
the court to advance the above entitled case on  
the docket for hearing at the opening of the next  
term.

Appellants were convicted of the crime of murder by a General Court Martial and three of appellants were sentenced to be hanged and the others to imprisonment for life. The reviewing authority affirmed the sentences of conviction and modified said sentences so that three of appellants were sentenced to imprisonment for life, one to twenty years imprisonment and the others to fifteen years imprisonment each. The alleged murder was committed while appellants were inmates of the disciplinary barracks at Fort Leavenworth, Kansas, on July 29, 1918. The trial before the court martial was held at Fort Leavenworth, Kansas, in November, 1918.

A petition for a writ of habeas corpus was filed by appellants in the United States District Court for the District of Kansas on the 14th day of April, 1920, and a final decree dismissing said petition was entered on the 11th day of June, 1920.

Appellants prosecuted an appeal to this court from the final judgment of the District Court dismissing the petition upon the ground, amongst others, that under the 92nd Article of War the Court Martial was without jurisdiction to try appellants for murder committed within the geographical limits of the States of the Union in time of peace (that is when the courts were open, *Ex Parte Milligan*, 4th Wall, l. c. 128 and *Caldwell v. Parker*, 40 Sup. Ct. 388), and that the trial was held and sentence imposed in violation of the rights secured to appellants by Section 2 of Article 3 and by the 5th and 6th Articles of the Amendment to the Constitution. Appellants also

assert error was committed in that some of the members of the Court Martial were not qualified to act as members of the Court Martial, and that therefore they are restrained of their liberty in violation of the foregoing constitutional provisions.

Appellants base this motion to advance upon the ground that they are restrained of their liberty upon a criminal charge by virtue of the sentence of a pretended tribunal which was without jurisdiction to promulgate the sentence, and that therefore they are entitled to a speedy deliverance.

Notice of this motion has been served upon opposing counsel.

ISAAC B. KIMBRELL,  
MARTIN J. O'DONNELL,  
*Attorneys for Appellants.*

Kansas City, Mo., September 11, 1920.

*To the Solicitor General:*

Please take notice that the above motion will be presented to the court on the first day of the October, 1920, term.

ISAAC B. KIMBRELL,  
MARTIN J. O'DONNELL,  
*Attorneys for Appellants.*